UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,916	05/31/2001	Akram Abboud	RPS920010034US1	7778

7590 06/09/2004	EXAMINER
BRACEWELL & PATTERSON, L.L.P.	PATEL, NITIN C

ART UNIT	PAPER NUMBER
2116	

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DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

RECEIVED

JUL 0 1 2004

Technology Center 2100

	Application No.	Applicant(s)
Office Action Summary	09/870,916	ABBOUD ET AL.
	Examiner	Art Unit
	Nitin C. Patel	2116

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☐ Responsive to communication(s) filed on _____.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-27_ is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _1-27_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on _04 January 2002_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All   b) ☐ Some * c) ☐ None of:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____.
      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
         application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _May 31, 2004_.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Notice of References Cited

	Application/Control No.	Applicant(s)/Patent Under Reexamination
	09/870,916	ABBOUD ET AL.

	Examiner	Art Unit	
	Nitin C. Patel	2116	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,594,757	07-2003	Martinez, Jesus A.	713/2
	B	US-5,764,992	06-1998	Kullick et al.	717/170
	C	US-5,790,852	08-1998	Salm, Ingolf	718/104
	D	US-2002/0049966	04-2002	Lin, Wen-Pin	717/178
	E	US-5,787,491	07-1998	Merkin et al.	711/173
	F	US-6,601,212	07-2003	Guha et al.	714/776
	G	US-6,308,265	10-2001	Miller, Gregory L.	713/2
	H	US-2002/0095672	07-2002	Evans et al.	717/175
	I	US-6,591,376	07-2003	VanRooven et al.	714/36
	J	US-6,453,413	09-2002	Chen et al.	713/2
	K	US-5,579,522	11-1996	Christeson et al.	713/2
	L	US-2002/0103981	08-2002	Smith et al.	711/162
	M	US-5,136,711	08-1992	Hugard et al.	713/2

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office
PTO-892 (Rev. 01-2001)   Notice of References Cited   Part of Paper No. 06022004

Substitute form 1449/PTO				Complete if Known	
INFORMATION DISCLOSURE STATEMENT BY APPLICANT				Application Number	
				Filing Date	Herewith
				First Named Inventor	Akram Abboud, et al.
				Group Art Unit	Unknown
				Examiner Name	Unknown
Sheet	1	of	1	Attorney Docket Number	RPS920010034US1

U.S. PATENT DOCUMENTS

Examiner Initials	IDS Doc #	U.S. Patent Document Number	Name of Patentee or Applicant	Publication Date MM-DD-YYYY	class/subclas
rul	AA	5,819,030	Chen, John Yun-Kuang	10/06/1998	709/220
rul	AB	5,870,550	Wesinger, Ralph E., et al	02/09/1999	709/218
rul	AC	5,901,148	Bowen, Ronald A., et al.	05/04/1999	709/203
rul	AD	6,157,934	Khan, Rashid N., et al.	12/05/2000	709/203
rul	AE	6,199,033	Tanaka, Yumi	03/06/2001	709/226

FOREIGN PATENT DOCUMENTS

Examiner Initials	IDS Doc #	Office	Foreign Patent Document No.	Name of Patentee or Applicant	Date of Publication	English Translation

OTHER PRIOR ART – NON PATENT LITERATURE DOCUMENTS

Examiner Initials	IDS Doc #	Include the name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	English Translation

Examiner Signature	Nitin C. Patel	Date Considered	5/25/04

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

DETAILED ACTION

1.   Claims 1 – 27 are presented for the examination.

Specification

2.   The disclosure is objected to because of the following informalities: Serial number is

missing on line 10 of page 1.

Appropriate correction is required.

Claim Objections

3.   Claims 1, and 10 are objected to because of the following informalities:

Claim 1 recites the limitation "said partitioned hard-drive" in line 4. There is insufficient

antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "said partitioned hard-drive" in line 6. There is

insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Double Patenting

4.   The nonstatutory double patenting rejection is based on a judicially created doctrine
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
improper timewise extension of the "right to exclude" granted by a patent and to prevent possible
harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.
Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686
F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA
1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to
overcome an actual or provisional rejection based on a nonstatutory double patenting ground
provided the conflicting application or patent is shown to be commonly owned with this
application. See 37 CFR 1.130(b).
        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37
CFR 3.73(b).

5.   Claims 1 – 27 are rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claims 1 - 20 of U.S. Patent No. 6,636,958.

Although the conflicting claims are not identical, they are not patentably distinct from each other

because they are directed to substantially the same invention including automatically re-

provisioning of appliance server with new application by determining from parameters provided

by an image file received at control logic of hard drive when corresponding application to be

loaded into first partition of hard drive requires more space than available within first partition,

responsive to determining step, triggering control logic to dynamically extend first partition [re-

provisioning] into an adjacent [second] partition to an amount of additional disk space required

by application, and subsequently installing application into first partition by initiating

decompressed files [claims 1 – 3, 4 – 9, 10 – 13, 14 - 20].

6.   Every elements of claim 1 in application is taught by patent claims 14 – 17 except

removing of a first application from first partition, which is inherent to dynamic install element

of claim 9 in patent.

7.   Elements of claim 2 and 3 of application for creating image file, and parameter file is

inherently taught by receiving of image file and determining parameters of image file of claim 14

of patent.

8.   Element of claim 4 of removing image file to storage location is inherently taught by

dynamic install element of claim 9 in patent.

9.   Loading step first downloads second application as an image file from a storage location

on network of claim 5 of application is disclosed in claim 16 of patent.

10.   Different partitions of hard-drive and its utility in claim 6 of application are disclosed in

claim 17 – 18 of patent.

11.   Restoring network parameters to appliance server with rebooting in claim 7 of application

is taught inherently by rebooting and execution with new application by claim 18 of patent.

12.   Expansion of NOS partition into float partition when it is determined that size of NOS is

not sufficient in claims 7, and 8 of application is taught by claim 17 of patent.

13.   Elements of claim 10 are taught in claims 10 - 12 of patent application.

14.   Elements of claim 11 and 12 of application for creating image file, and parameter file is

inherently taught by receiving of image file and determining parameters of image file of claim 10

of patent.

15.   File transfer protocol [FTP] of claim 13 in application is inherently taught by

downloading of image file in claim 12 of patent.

16.   Loading step first downloads second application as an image file from a storage location

on network of claim 14 of application is disclosed in claim 16 of patent.

17.   Different partitions of hard-drive and its utility in claim 15 of application are disclosed in

claim 13 of patent.

18.   Restoring network parameters to appliance server with rebooting in claim 16 of

application is taught inherently by rebooting and execution with new application by claim 18 of

patent.

19.   Expansion of NOS partition into float partition when it is determined that size of NOS is

not sufficient in claims 17, and 18 of application is taught by claim 13 of patent.

20.   Elements of hard-drive partitions, and re-provisioning of claim 19 of application are taught in claim 1 and 4 – 9 of patent.

21.   Automatic removal of application in claim 20 of application is taught inherently by automatically re-provisioning by dynamic install element of claim 9 in patent.

22.   Element of claim 21 of application for creating image file is taught inherently by receiving of image file and determining parameters of image file of claim 14 of patent.

23.   Different partitions of hard-drive and its utility in claim 22 of application are disclosed in claims 5 - 6 of patent.

24.   Program code to reboot appliance server during re-provisioning in claim 23 of application is taught by claim 11 of patent.

25.   Image file transfer in claim 24 of application is taught inherently by downloading and storing of image files in claim 7 of patent.

26.   Every element in claim 25 of application is taught in claims 4, 5, 7, 9, and 16 except file transfer protocol backbone, which is an inherent element to network.

27.   Automatically removing of application program in claim 26 of application is inherently taught by dynamic install element of claim 9 in patent.

28.   Each element of claim 27 of application are taught in claim 14 – 18 of patent except creating image file, which is inherently taught by receiving of image file and determining parameters of image file of claim 14 [receiving image file i.e. somewhere somehow it is created].

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nitin C. Patel whose telephone number is 703-305-3994. The examiner can normally be reached on 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Brown can be reached on 703-308-1159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nitin C. Patel
June 2, 2004

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